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4 Attorneys for Plaintiff KERWIN LOQUIO

FILED

2008 SEP -3 PM 4:20

CLERK US DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY CMY DEPUTY

7 UNITED STATES DISTRICT COURT
 8 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 KERWIN LOQUIO, an individual,) IN ADMIRALTY
 11 Plaintiff,) Case No. '08 CV 1616 IEG POR
 12 vs.) SEAMAN'S COMPLAINT FOR
 13 C. & F. FISHING, LTD., *in personam*, and) PERSONAL INJURIES-JONES
 14 F/V DIANA, her engines, tackle, apparel,) ACT; UNSEAWORTHINESS;
 15 furniture, and appurtenances, *in rem*; DOES) MAINTENANCE AND CURE;
 16 1-10,) STATUTORY WAGES
 17 Defendants.) DEMAND FOR JURY TRIAL

18 I.

19 GENERAL ALLEGATIONS

20 1. Jurisdiction is based on the Jones Act, 46 U.S.C. §688 and the Admiralty and
 21 Maritime Jurisdiction of this Court under 28 U.S.C. §1331 and 28 U.S.C. §1333.

22 2. Plaintiff KERWIN LOQUIO was at all times herein mentioned a seaman and
 23 entitled under the provisions of 28 U.S.C. §1916 to bring this Complaint without prepayment
 24 of cost or posting of bond.

25 3. Plaintiff is informed and believes that at all times relevant, Defendant C. & F.
 26 FISHING was a California corporation that did business within the state of California and
 27 was and is subject to personal jurisdiction and venue within this judicial district.

28 4. At all times herein mentioned, the tuna fishing vessel F/V DIANA was a

1 United States flag vessel afloat upon navigable waters on the high seas of the Pacific Ocean.
 2 At all times relevant, F/V DIANA sailed on voyages from a port of the United States and was
 3 at least 20 gross tons as measured under sections 46 U.S.C. sections 14502, 14302 and
 4 14104. Hereinafter, the "VESSEL" shall refer to F/V DIANA.

5. Plaintiff is informed and believes that the VESSEL will or may be within this
 6 district during the pendency of this action.

7. At all times relevant, Plaintiff is informed and believes that Defendants,
 8 including C. & F. FISHING, owned, operated, managed, maintained, controlled, chartered
 9 and navigated the VESSEL.

10. Plaintiff is ignorant of the true names and capacities of the Defendants sued
 11 herein as DOES 1 through 10 and therefore Plaintiff sues these Defendants by such fictitious
 12 names. Plaintiff will amend the Complaint to allege their true names and capacities when
 13 ascertained. In the meantime, Plaintiff is informed and believes that each of the fictitiously
 14 named Defendants is responsible in some manner for the occurrences herein alleged, and that
 15 Plaintiff's damages as herein alleged were legally caused by such Defendants.

16. Plaintiff is informed and believes that all of the Defendants, including those
 17 sued as DOES 1 through 10, were and are the agents, alter egos, partners, joint venturers, co-
 18 conspirators, principals, shareholders, servants, employers, employees and the like of their
 19 co-Defendants, and in doing the things hereinafter mentioned, were acting within the course
 20 and scope of their authority as such agents, alter egos, partners, joint venturers, co-
 21 conspirators, principals, shareholders, servants, employers, and employees and the like with
 22 the permission, ratification or consent of their co-Defendants and thus are legally liable for
 23 punitive damages resulting from the acts or omissions of the others.

24. I.
 25. FIRST CLAIM FOR RELIEF
 26. (Jones Act Negligence)

27. 9. Plaintiff refers to and by that reference incorporates as though fully set forth
 28 herein each and every allegation contained in paragraphs 1 through 8, above.

1 10. In or about August 25, 2007, Plaintiff was employed by Defendants and was
 2 working aboard F/V DIANA as a commercial fisherman at the specific request and for the
 3 benefit of Defendants.

4 11. In or about August 25, 2007, upon the high seas, Plaintiff was performing his
 5 regular duties when, through no fault of his own, his foot became entangled in a line
 6 controlled elsewhere on the VESSEL which cut, tore and fractured his skin, muscles,
 7 ligaments, nerves, and bones in his leg, resulting in injury to Plaintiff's leg and other parts of
 8 his body. Plaintiff was injured through no fault of his own but as a legal result of the
 9 negligence and unseaworthiness of Defendants.

10 12. Defendants were negligent in a number of ways, including, but not limited to,
 11 the following:

- 12 (a) Failing to provide Plaintiff with a safe place in which to work;
- 13 (b) Failing to exercise ordinary care under the circumstances to have the vessel's
 14 training, equipment and work methods in such a condition that Plaintiff would be able to
 15 perform his duties with reasonable safety;
- 16 (c) Failing to have proper safety and medical equipment aboard the vessel.
- 17 (d) Failing to abide by safety laws, regulations, statutes and customs and practice
 18 necessary for safety at sea.
- 19 (e) Failing to adequately and regularly inspect the equipment on board the vessel
 20 prior to its use, and allowing the equipment to fall into such a state of disrepair
 21 as to be unseaworthy.
- 22 (f) Failing to adequately and properly monitor and supervise the work of Plaintiff
 23 and other members of the crew such as to prevent such injury to Plaintiff.

24 13. As a proximate result of the aforesaid negligent acts and omissions, among
 25 others, Defendants breached the duty of care they owed to Plaintiff.

26 14. As a proximate result of the aforesaid negligent acts and omissions, among
 27 others, the Defendants breached the duty of care they owed to Plaintiff.

28 15. As a legal result of the Defendants' negligence, Plaintiff sustained serious and

1 grievous physical and emotional injuries.

2 16. As a further legal result of the negligence of the Defendants, Plaintiff has
 3 sustained and will continue to sustain damages, including and without limitation, general
 4 damages, special damages, medical expenses, life care expenses, emotional distress and pain
 5 and suffering, all of which will be established at trial according to proof.

6 17. As a further legal result of the Defendants' negligence, Plaintiff lost and will
 7 continue to lose wages, earnings, income, and earning capacity, which will be established at
 8 trial according to proof.

9 II.

10 SECOND CLAIM FOR RELIEF

11 (Unseaworthiness)

12 18. Plaintiff refers to and by that reference incorporates as though fully set forth
 13 herein each and every allegation contained in paragraphs 1 through 17, above.

14 19. At all times herein relevant, Plaintiff was acting in the service of F/V DIANA
 15 and was performing duties of the type traditionally performed by a seaman.

16 20. At the time and place alleged herein, by the provisions of the General Maritime
 17 Law of the United States, Defendants and their agents, employees and servants warranted to
 18 Plaintiff that F/V DIANA, its decks, gear, equipment, appurtenances, tools, crewmembers
 19 and work methods were seaworthy and in compliance with applicable laws, statutes and
 20 regulations enacted for the safety of the crew.

21 21. Defendants and each of them breached this warranty in that F/V DIANA, its
 22 decks, gear, equipment, appurtenances, tools, crewmembers and work methods were neither
 23 seaworthy nor in compliance with applicable laws, statutes and regulations enacted for the
 24 safety of the crew.

25 22. As a legal result of these alleged breaches, Plaintiff sustained the injuries as set
 26 forth herein suffering the general and special damages as set forth herein.

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1 III.
23 THIRD CLAIM FOR RELIEF
45 (Maintenance and Cure)
67 23. Plaintiff refers to and by that reference incorporates as though fully set forth
8 herein each and every allegation contained in paragraphs 1 through 22, above.
910 24. By reason of the accident set forth in the allegations above, Plaintiff was
11 disabled and is disabled from resuming any related employment. Because of the serious and
12 grievous injuries suffered by Plaintiff while in the service of the vessel, he was entitled to
13 receive prompt payment of maintenance and cure. Defendants have willfully or arbitrarily
14 failed to provide all maintenance and cure owing. As a legal result of the aforementioned
15 failure of Defendants to provide maintenance and cure owing, Plaintiff's injury has been
16 worsened thereby entitling him to all damages legally caused by the failure to provide
17 maintenance and cure owing including attorneys' fees and costs and consequential special
18 and general damages. Defendants' willful or arbitrary failure to promptly pay maintenance
19 and cure entitles Plaintiff to recover all damages legally caused by the failure to promptly
provide maintenance and cure owing, including attorneys' fees and costs and consequential
special and general damages. For the purposes of this claim, recoverable attorneys' fees and
costs include all reasonable attorneys' fees and costs expended on this case that are not solely
related to the Jones Act and Unseaworthiness claims herein above alleged.20 IV.
2122 FOURTH CLAIM FOR RELIEF
2324 (Statutory Wages or Sanctions for Violation of 46 U.S.C. 10601)
2526 25. Plaintiff refers to and by that reference incorporates as though fully set forth
27 herein each and every allegation contained in paragraphs 1 through 24, above.
2829 26. During the time Plaintiff worked aboard F/V DIANA, Plaintiff was not
30 provided for each voyage on the vessel a signed written fishing agreement as required by and
31 consistent with 46 U.S.C. section 1060. By reason of Defendants' violations of law,
32 including without limitation, Defendants' failure to have signed written agreements or

1 fishing contracts with Plaintiff stating the period of effectiveness, the terms of any wage,
 2 share or other compensation, any other agreed terms, as required by 46 U.S.C. section 1060,
 3 Plaintiff is entitled under 46 U.S.C. section 11107 to statutory wages or the like measured by
 4 the higher of any agreed rate for a seaman or the highest rate for any seaman at the port
 5 where Plaintiff was engaged, the exact amount to be proven at trial.

6 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as
 7 follows:

8 1. That process and due form of law, according to the practices of this Honorable
 9 Court in causes of admiralty and maritime jurisprudence, issue against F/V DIANA, her
 10 engines, tackle, apparel, etc., and that all persons having or claiming any interest therein be
 11 cited to appear and answer, under oath, all and singular the matters; that Plaintiff have a
 12 judgment for his damages aforesaid, with interest and costs; and that F/V DIANA and/or her
 13 engines, tackle, apparel, appurtenances, etc., be condemned and sold to satisfy Plaintiff's
 14 judgment;

15 2. That process and due form of law according to the practice of this Honorable
 16 Court issue against the Defendants, citing them to appear and answer all and singular the
 17 matters aforesaid;

18 3. That Plaintiff may have judgment for his general, special and other allowable
 19 damages in an amount according to proof at trial;

20 4. That Plaintiff be awarded prejudgment interest on the amounts awarded;

21 5. That Plaintiff be awarded costs of suit;

22 6. That Plaintiff be awarded Maintenance and Cure in an amount necessary to
 23 make him whole;

24 7. That Plaintiff be awarded his attorney's fees, costs and related damages
 25 necessary to obtain the Maintenance and Cure owed him; and

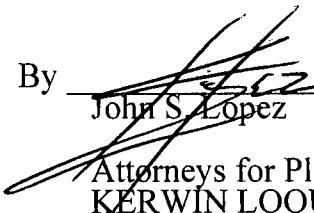
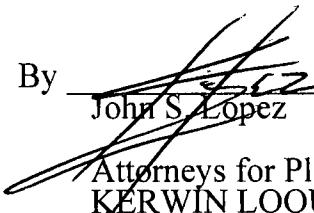
26 8. That Plaintiff be awarded such other and further relief as this Honorable Court
 27 deems just and proper.

1 DATED: September 2, 2008

Respectfully submitted,

2 THE LAW OFFICE OF JOHN S. LOPEZ

3 By

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John S. Lopez5 
6 Attorneys for Plaintiff
7 KERWIN LOQUIO8
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: September 2, 2008 Respectfully submitted,

THE LAW OFFICE OF JOHN S. LOPEZ

66

By John S. Lopez

~~John S. Lopez~~

Attorneys for Plaintiff
KERWIN LOQUIO

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KERWIN LOQUIO

(b) County of Residence of First Listed Plaintiff American Samoa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

the Law Office of John S. Lopez, John S. Lopez, Esq., 290 Landis
ve., Suite C, Chula Vista, CA 91910 (619) 934-8797

DEFENDANTS

C&F FISHING, LTD; F/V DIANA; DOES 1-10

FILED

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY) 13 PM 4:20

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

SOUTHERN DISTRICT OF CALIFORNIA

Attorneys (If Known)
'08 CV 1616 IEG POR YMT DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Jones Act, 46 U.S.C. §688; Admiralty & Maritime Jurisdiction 28 U.S.C. §1331 and 28 U.S.C. §1333.

VI. CAUSE OF ACTION

Brief description of cause:
Jones Act Negligence; Unseaworthiness; Maintenance & Cure; Statutory Wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

9/2/08

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

WA